S.B. CIVIL WRIT PETITION NO.6967/2006

Smt. Ram Kunwar & anr. vs. Smt.Sajida Khan & ors.

Date : 15.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.S Saruparia, for the petitioners.
Mr.LK Purohit, for the respondents.

- - - - -

Heard learned counsel for the parties.

The petitioners/defendants are aggrieved by the order dated 21.11.2006 by which the trial court allowed the respondents/plaintiffs' application submitted for taking on record expert opinion obtained on the Will set up by the petitioners.

According to learned counsel for the petitioners, the respondents/plaintiffs were in possession of the expert opinion at the time when his evidence was going on. The plaintiffs tried to produce the expert opinion in cross examination of the defendants. At that time, the trial court itself refused to admit the document in evidence on the ground that the document is not on record and further the defendants are not the authors of

the document and, therefore, the defendants cannot be confronted with the expert opinion. And on the same day, the plaintiff submitted application seeking permission to produce expert opinion in evidence which was allowed by the trial court vide impugned order dated 21.11.2006.

According to learned counsel for the petitioners, it was burden of the plaintiffs to prove the expert opinion and the plaintiffs did not prove the expert opinion and now after the evidence of the defendants, sought permission to produce the document. In view of the above, the trial court should not have allowed the production of the expert opinion at this belated stage and further when once the trial court refused to admit the document, then the trial court could not have allowed the production of document subsequently.

Learned counsel for the plaintiffs/respondents submitted that the Will in question was set up by the petitioners and they themselves produced the original Will in the Court subsequently and thereafter, the opinion was obtained. It is also submitted that the document could have been produced by the plaintiffs at the time of cross examination of the defendants but that was not

allowed. Therefore, the plaintiffs submitted application and sought permission to produce the evidence.

I considered the submissions of learned counsel for the parties and perused the reasons given by the court below when the document was sought to be produced in cross examination of the defendants and the reasons given in the subsequently passed order dated 21.11.2006.

The scope of production of document at the time of cross examination of the witness or opposite party is entirely different and the trial court, therefore, rightly observed that since the document in question was not executed by the witness, therefore, the plaintiffs cannot confront the document. When the plaintiffs were not allowed to produce the document by the trial court at the time of cross examination of the defendants, then the plaintiffs submitted the application for production of the document and according to the plaintiffs, the burden to prove the Will was upon the defendants and, therefore, in rebuttal only, the plaintiffs have produced the document. The plaintiffs have, therefore, produced the document at the relevant time and even if there is some

delay, this Court is not inclined to interfere in the impugned order in the facts of the case while exercising the jurisdiction under Article 227 of the Constitution of India only on the ground of delay of few days.

In view of the above, this writ petition having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya